



Availability of lawyers in RRR NSW: what we have learnt

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Abstract: *Recent concerns about the perceived loss of lawyers from regional, rural and remote (RRR) areas have centred on recruitment and retention issues. This paper highlights key findings of two studies by the Law and Justice Foundation of NSW which reveal that, while starting from a lower base, solicitor numbers in RRR NSW have not been declining overall or as a per capita rate. However, there were area to area variations, with changes in solicitor numbers generally paralleling population changes. Principally, the availability of solicitors in any area is first determined by the number of solicitor positions in that area, which itself is based on economic, public policy and other factors. In remote areas with declining populations and economies, recruitment and retention issues may then become a problem. Therefore, attention needs to focus on the broader challenge of providing the appropriate mix of legal services in RRR areas, rather than narrowly focusing on recruitment and retention issues.*

This paper highlights key findings from two research reports produced by the Law and Justice Foundation of NSW:

- **Recruitment and retention of lawyers in regional, rural and remote NSW** (Forell, Cain & Gray 2010)
- **Lawyer availability and population change in regional, rural and remote NSW** (Cain, Macourt & Mulherin 2014)ⁱ

Both studies involved quantitative and qualitative research methods.

The quantitative approach included the analysis of data obtained through:

- two censuses of all NSW solicitors registered with the Law Society of NSW holding a practising certificate – the first taken as at 30 June 2009 (n=20,372) and the second census taken as at 30 June 2011 (n=21,606)ⁱⁱ
- two separate censuses of all filled and vacant public legal assistance services' solicitor positions in NSW as at 30 June 2009 and 30 June 2011
- assembling data on all legal aid grants assigned to private solicitors in the 2008-2009 and 2010-2011 financial years and all registered legal aid panel members during these periods.

The first study included in-depth interviews with selected solicitors who were working or had worked in a public legal assistance service in a RRR area. The second study included in-depth interviews with private and public solicitors practising in areas that experienced significant population loss between 2001 and 2011 and which had fewer than five solicitors.

Introduction

Over the last two decades there has been popular concern about a perceived decrease in lawyers working in regional, rural and remote (RRR) areas across Australia. Attention has centred on problems in the recruitment and retention of private and public lawyers outside of large cities and metropolitan areas.

The Law and Justice Foundation of NSW undertook two studies to understand the nature of these issues and to better inform strategies to improve access to lawyers for disadvantaged people in RRR areas. Both studies examined the availability of lawyers across RRR areas of NSW, and included an assessment of problems relating to the recruitment and retention of solicitors in different parts of NSW.

These studies, for the first time, considered solicitor numbers at the level of local government areas (LGAs), and within the broader context of indicators of socio-economic disadvantage and remoteness.

What have we learnt?

First and foremost, the perception of a progressive loss of solicitors from RRR NSW, in general, is not supported by the evidence.

- The actual number of solicitors in RRR NSW increased between 2000 and 2011, and across the same period, the per capita rate of solicitors in RRR NSW remained relatively stable.
- Overall, solicitor vacancy rates in NSW public legal service positions – one indicator of recruitment and retention difficulties – remained fairly low (7.2% in 2009 and 7.9% in 2011). The vacancy rates for areas of NSW outside of Sydney were slightly higher (9.3% in 2009 and 9.0% in 2011).

These positive findings, however, must be qualified by the realities of the availability of lawyers in some RRR areas.

- While the per capita rate of solicitors in RRR NSW has remained relatively stable, the ratio of solicitors to residents in RRR areas is approximately three times *lower* than that for NSW as a whole.
- A number of factors favour the growth of large regional centres over smaller country towns, which affects the viability of services, including legal services, in these smaller towns.
- There were substantial levels of public legal service positions occupied by non-incumbents in some RRR areas. This may imply high turnover, reflecting efforts by services to keep these positions filled. The high turnover may also affect the consistency of legal services provided in these areas.
- Inter-regional variations to the broad RRR trends were observed. Some RRR areas had recruitment and retention difficulties and some did not. In general, the more remote the area, the more difficult the working conditions, the greater the level of socio-economic disadvantage, and the greater the difficulty in attracting and retaining solicitors, especially experienced solicitors.
- Intra-regional differences were also observed. For example, even within regions that lost (private or public) solicitors between 2009 and 2011, some constituent Local Government Areas (LGAs) (containing no regional centres but only small country towns and rural areas) experienced an increase in solicitor numbers.
- In some remote areas (such as the Far West) solicitor vacancy rates were higher, the time public legal service solicitors served in positions was lower (suggesting more frequent staff turnover), and solicitors tended to be younger and less experienced than those in inner and outer regional areas of NSW.
- Solicitors who took up positions in public legal services in remote locations generally only stayed for one or two years. In general, the pattern for these solicitors was to relocate to a less remote practice in an area which had higher levels of service and amenity.
- There were 19 LGAs in NSW with no locally-based solicitors (private or public). If there are no solicitor positions within an area, no recruitment or retention difficulties will be evident. In these areas, concerns may not be due to positions being vacant or hard to fill, but rather due to a lack of solicitor positions in the first place. While there may be no solicitors based in an area, legal services may be provided through other service models such as outreach.ⁱⁱⁱ

The availability of solicitors in RRR areas is dependent *first* on the existence of legal positions, and only *then* on recruitment and retention to fill those positions.

- Interviews with a sample of private solicitors based in RRR areas with declining populations reported, amongst other things, that none had plans (or could afford) to recruit new staff. This is an issue separate to recruitment and retention difficulties – these solicitors suggested there was not enough legal work to sustain additional resident solicitors in their local area.
- Some areas may simply not have the population to economically sustain a viable legal practice. Given the declining populations in some RRR areas, this may become an increasingly relevant factor over time, particularly in RRR towns that currently only have one or two locally-based solicitors. Alternative models of legal service delivery may need to be developed and implemented in these areas.

The challenge

The evidence suggests that recruitment and retention issues in RRR areas should be seen as only one part of a larger and more significant question:

How can an appropriate mix of legal services be provided to address the range of legal needs in RRR areas, especially in remote areas and areas experiencing declining populations?

This question should be informed by the learnings from the latest legal needs research which emphasises the need to:

- target and tailor solutions for particular disadvantaged groups and communities appropriate to their needs and capabilities
- reach groups and communities facing substantial barriers to accessing legal services (e.g. distance, remoteness, reduced mobility)
- take into account the interaction of multiple legal and non-legal problems experienced by disadvantaged groups and communities through ‘joined-up’ services.^{iv}

Meeting the challenge

Extrapolating from the findings of the two RRR lawyer studies and the latest legal needs research, we can draw some conclusions relating to the planning, resourcing and implementing of legal service delivery options to address the challenges in RRR NSW.

No ‘one-size’ solution

The differences between the various regions — in terms of geography, demography and amenity, and the availability of services or gaps in services — suggests that not only will a ‘one size fits all’ approach not work, but also that the planning and implementation of services should be strongly influenced by regional and local level involvement. This needs to be facilitated by agencies and organisations at the national and jurisdictional levels — by determining priorities, establishing standards and allocating resources. However, it will be at the regional and local levels that the operationalisation of these priorities and standards will need to occur through agencies working within each region.

Monitoring and evaluation

As different solutions are implemented in particular locations to cater for different circumstances, they need to be subjected to appropriate monitoring and evaluation. Unfortunately, this has not often been a feature of program implementation in the legal sector so far.

Changing landscape

The circumstances in each RRR area will continue to change – particularly in remote areas and areas experiencing continuing population decline. Therefore, sustainable and inexpensive research may yield insights that allow for the refinement of strategies and solutions to meet the key challenge of providing the appropriate mix of legal services in each RRR area.

Endnotes

ⁱ These two reports are available at: www.lawfoundation.net.au/publications.

ⁱⁱ The total numbers of solicitors in the Foundation’s studies differ from those reported in the *Profiles of the Solicitors of NSW* by the Law Society. The data on *member* solicitors provided by the Law Society to the Foundation represent approximately 10 per cent fewer NSW solicitors than the total number with a practising certificate for the relevant year. Information on non-member solicitors was not available for the Foundation’s studies. Further, in each study, a small proportion of Law Society records was missing essential information: the postcode of the solicitor’s main practice location. In general, where the postcode of the practice location was missing, the practice type was also missing. The Law Society advised that such records generally relate to solicitors currently not in employment.

ⁱⁱⁱ Forell, S, McDonald, H, Ramsey, S, & Williams, S 2013, *Review of Legal Aid NSW outreach legal services. Stage two report: Evolving best practice in outreach - insights from experience*. Law and Justice Foundation of NSW, Sydney.

^{iv} Pleasence, P, Coumarelos, C, Forell, S, & McDonald, H 2014, *Reshaping legal assistance services: building on the evidence base*. Law and Justice Foundation of NSW, Sydney.